

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1111 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHKUMAR VRAJLAL KADIA

Versus

STATE OF GUJARAT

Appearance:

HL PATEL ADVOCATES for Petitioner

MR PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/01/99

ORAL JUDGEMENT

#. In this petition under Article 226 of the Constitution of India, the prayer is for quashing the externment order - Annexure-B and the order of the appellate authority Annexure-D to this writ petition.

#. The brief facts are that the externaling authority

issued a show cause notice under Section 59 of the Bombay Police Act to the petitioner asking him to show cause as to why he should not be externed from the District Sabarkantha, Mehsana, Gandhinagar and Ahmedabad Rural for a period of two years in view of his criminal and anti social activities. In the notice, information was given to the petitioner that four cases were registered under various sections of IPC between years 1995 to 1997. In addition to this, it was disclosed in the notice that the petitioner was engaged in the activities of theft, loot and scuffle in Prantij village, as a result of which, proceedings under Prevention of Anti Social Activities Act (for short 'PASA Act') were initiated against him. He was, however, released from jail in the year 1994 and even thereafter he continued his criminal activities, as a result of which four cases were registered against him. On this material, the externing authority further mentioned in the notice that the petitioner is desperate and head strong person and no person is ready and willing to file a complaint or give deposition in the Court against the petitioner.

#. The petitioner appeared in response to the show cause notice and submitted his reply. He was afforded adequate opportunity of hearing. He examined witnesses in his defence. The externing authority had considered the entire material on record and after hearing arguments passed the impugned order of externment Annexure-B. Feeling aggrieved, the petitioner preferred an appeal but the appellate authority also dismissed the appeal and the externment order was confirmed. It is therefore this petition.

#. As many as four points were urged by the learned counsel for the petitioner to assail the impugned orders of the externing authority as well as the appellate authority. He also assailed the notice issued against the petitioner.

#. An important point which seems to have escaped the attention of the learned counsel for the petitioner is that the externing authority has not mentioned in the show cause notice any reason why he proposed to extern the petitioner from four districts viz. Mehsana, Sabarkantha, Gandhinagar and Ahmedabad Rural. In the externment order, no reason has been given as to why the petitioner was externed from these four districts. The show cause notice indicates that the activities of the petitioner were confined in Prantij Village. This village falls within the jurisdiction of District Sabarkantha. There is not even a remote allegation that

the petitioner if externed from the Sabarkantha district, will operate and continue his activities from contiguous districts of Mehsana, Gandhinagar and Ahmedabad Rural. An externing authority is perfectly justified to pass externment order against a person in respect of contiguous districts as well, but while doing so, the authority has to record reasons why he proposed to extern the petitioner or such person from Districts other than the district in which his activities are confined. This therefore indicates that the notice was issued in mechanical manner and the externment order was also passed in a mechanical manner and the appellate authority also did not consider whether on the facts and circumstances of the case externment order against the petitioner from four districts was justified or not. It has therefore rendered the order of the appellate authority also invalid inasmuch as it suffers from the vice of non application of mind on this count.

#. Another infirmity in the show cause notice, in the externment order as well as in the order of the appellate authority in that vague reference has been given about the petitioners earlier detention under Prevention of Anti Social Activities Act and his consequent release from Bhuj Jail in the year 1994. The order shows that under the orders of the High Court, the petitioner was released from detention under PASA. The details of previous detention under PASA the case number and brief account of the activities on account of which the petitioner was detained under PASA were not given in the notice. In the counter affidavit, an attempt has been made to show that the externing authority did not consider the previous detention of the petitioner under PASA while passing the externment order but this belated stand of the authority cannot be accepted in view of clear recital in the notice as well as in the externment order so also in the order of the appellate authority that the petitioner was detained earlier under PASA and was released. The copy of order of release was not supplied to the petitioner. If the petitioner was released under PASA, it can be said that those grounds of detention were found insufficient by the High Court for justifying the detention of the petitioner under PASA. Thus, the activities prior to the detention of the petitioner under PASA could not be considered for passing externment order against the petitioner. If the subsequent activities of the petitioner after his release in the year 1994 are taken into account, it is confined to two portions. The first is that certain confidential witnesses had stated before the authorities that on account of fear of the petitioner, they were not ready

and willing to give statements or file any complaint. However, even the extract of the statement of the confidential witnesses was not supplied to the petitioner nor it was disclosed in the show cause notice. Of course, the petitioner was not entitled to ask for entire copy of the statement of the confidential witnesses or their names and address but certainly he was entitled to know afterall what was in brief the statements of those witnesses on account of which activities of the petitioner were considered by the authority as menace to the public or to the locality. This omission on the part of the externing authority has prevented the petitioner from furnishing effective reply to the show cause notice.

#. So far as the registered cases are concerned, it is not clear from the show cause notice whether all four cases are under investigation or they are pending in various courts. In brief, offences committed in these four cases are under Sections 323, 114, 504, 506(2), 394, 427 of IPC. If a person commits offences punishable under Sections 323, 524 and 506 of IPC, he cannot be said to be menace to the Society. Likewise the offence of theft and robbery committed repeatedly does not amount to menace to the society. It is not disclosed in the show cause notice or in the externment order that the petitioner was repeatedly committing such offences. Unless, the petitioner was menace to the society, the order of externment against him cannot be said to be justified for which the case of MOHAMMEDUMAN MOHAMMADHUSEN VS. DY. POLICE COMMISSIONER AND OTHERS, BARODA, 1985 - 1 GLR 199 can be referred.

#. I do not find any merit in the contention that the notice is invalid because the period during which the petitioner committed the aforesaid offences is not disclosed. I have already mentioned above that the activities of the petitioner prior to his release in the year 1994 under PASA, could not be considered for passing externment order and as such not disclosing the period of activities prior to 1994, is immaterial. So far as the period of activities after 1994 is concerned, it was disclosed in four registered cases between the years 1995-97. Thus, on this count, the notice cannot be said to be invalid. In the externment order, there is mention that few witnesses gave statement before the police on the condition of their anonymity that the petitioner was menace to the society. As stated earlier, the extract of statements of these witnesses was neither furnished nor disclosed in the show cause notice. The externing authority in camp held on 17th April, 1998 examined those witnesses and was satisfied that the activities of the

petitioner were menace to the society. Unless the extract of those statements were disclosed to the petitioner, no reliance could be placed on such statements abruptly while passing the externment order. It further appears that two out of four such witnesses were examined by the petitioner and they did not support the allegations against the petitioner. On this fact, it can be further said that the secret witnesses could not be held to be wholly reliable. For the reasons stated above, notice and the order of externment cannot be sustained.

#. So far the order of the appellate authority is concerned, it also suffers from the vice of non application of mind inasmuch as it has not considered all the nine points raised in the memo of petition and reproduced in the order of appellate authority. A casual reference has been made that offences were committed by the petitioner which are punishable under Chapter 16 & 17 of the IPC. Irrelevant consideration of the detention under PASA and consequent release of the petitioner in the year 1994 was also undertaken by the appellate authority. The appellate authority has by subjective satisfaction confirmed the order of externing authority. Such order which is passed on subjectivity, cannot be sustained inasmuch as, the appellate authority was exercising powers and functions as quasi judicial authority and quasi judicial authority though not expected to write a detailed judgment yet is certainly expected to write the order which shows some objectivity.

##. For the reasons stated above, the show cause notice and the externment order as well as order of the appellate authority cannot be sustained. The petition therefore, succeeds and is allowed. The show cause notice, externment order and the order of the appellate authority as contained in Annexure A, B & D are hereby quashed.

Date : 19-1-1999

(D.C.Srivatava,J.)

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